



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**WASHINGTON, D.C. 20460**

**SEP 20 2006**

**OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES**

RADM Richard R. Behn  
NOAA's Office of Marine and Aviation Operations  
National Oceanic and Atmospheric Administration  
8403 Colesville Road, Suite 500  
Silver Spring, MD 20910-3282

Dear Admiral Behn:

I am writing in regard to the intended transfer of the decommissioned National Oceanic and Atmospheric Administration (NOAA) vessel the MCARTHUR in accordance with Public Law 108-219, Title I, Section 101(a). Specifically, NOAA has requested the Environmental Protection Agency (EPA) provide an opinion on NOAA's characterization of this transfer as falling under 40 CFR § 761.20(c)(2), a permissible distribution-in-commerce for disposal of Polychlorinated Biphenyls (PCBs) under the Toxic Substances Control Act (TSCA). 15 U.S.C. et. seq. NOAA has information indicating the MCARTHUR contains PCBs in excess of 50 ppm.

40 CFR §761.20(c)(2) states: "Any person may process and distribute in commerce for disposal PCBs at concentrations of  $\geq 50$  ppm, or PCB Items with PCB concentrations of  $\geq 50$  ppm, if they comply with the applicable provisions of this part." EPA has reviewed the draft Memorandum of Agreement (MOA) for the proposed joint transfer of this vessel from NOAA to the local government of the Utrök Atoll (Utrök) and then to Stabbert Maritime Yacht and Ship, LLC. (Stabbert). EPA would like additional language regarding TSCA included in the MOA, and has provided its comments directly to NOAA's counsel; a marked-up version of the MOA with these changes is attached. This MOA stipulates the final transfer of the MCARTHUR to Stabbert, who is to remove TSCA-regulated PCB materials from the vessel and dispose of them in accordance with 40 CFR Part 761. If the PCBs onboard cannot be remediated by Stabbert within 6 months, title and possession of the vessel will revert to NOAA. Based on the information provided by NOAA, including the specific terms of the MOA, EPA believes this intended transfer of the MCARTHUR as specified in the draft MOA falls within the scope of §761.20(c)(2) as permissible distribution-in-commerce for disposal of PCBs, and no specific approval or authorization by EPA is required for this transfer to occur.



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If you have any additional questions about this matter, please contact me at (202) 566-0718 or Sara McGurk at (202) 566-0480.

Sincerely,

A handwritten signature in black ink, reading "Maria J. Doa". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Maria J. Doa, Ph.D., Director  
National Program Chemicals Division

Attachment

**MEMORANDUM OF AGREEMENT BETWEEN  
THE DEPARTMENT OF COMMERCE/  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
THE LOCAL GOVERNMENT OF THE UTRÖK ATOLL  
AND STABBERT MARITIME YACHT AND SHIP, LLC,  
CONCERNING TRANSFER AND REMEDIATION  
OF THE DECOMMISSIONED NOAA SHIP MCARTHUR**

**I. Parties and Purpose**

This agreement is between the Department of Commerce (through the National Oceanic and Atmospheric Administration (NOAA)), the local government of the Utrök Atoll (Utrök), and Stabbert Maritime Yacht and Ship, LLC. (Stabbert). This agreement establishes the terms and conditions under which, in accordance with Public Law 108-219, Title I, Section 101(a), NOAA agrees to transfer the decommissioned NOAA research vessel MCARTHUR. (Builder: Norfolk Shipbuilding and Drydock; Designer: MARAD (same design as Davidson); Launched: November 1965, Delivered November 1966; Commissioned: December 1966; Hull number: S330.) This Agreement also memorializes the subsequent sale of the vessel by Utrök to Stabbert, and Stabbert's commitment to complete all required remediation of hazardous materials, including PCBs, on the vessel.

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**II. Authorities and References**

Pursuant to Public Law 108-219, Title I, Section 101(a), the Secretary of Commerce is authorized, at its discretion, to transfer, without consideration, all right and title to a decommissioned NOAA ship in operable condition. Authority to transfer such ship has been delegated from the Secretary of Commerce to NOAA. This transfer is exempt from GSA surplus personal property procedures as authorized under 41 C.F.R. 102-36.275(c).

**III. Responsibilities of the Parties**

(A) NOAA and Utrök

1. NOAA agrees to transfer, without consideration, all title to and interest in the vessel MCARTHUR to Utrök, contingent upon full compliance by all parties with the terms and conditions set forth in this Agreement. Utrök accepts all title to and interest in the MCARTHUR.
2. Utrök further agrees that funds derived from the subsequent sale of this vessel shall be used only for the purposes established in Public Law 108-219, Title I, Section 101(a); "activities in support of rehabilitation, radiological monitoring, and resettlement of the people of Utrök."

3. NOAA shall transfer the MCARTHUR to Utrök in “operable condition”. The parties agree that if MCARTHUR’s engine can be started, the vessel shall be deemed in operable condition. NOAA otherwise makes no warranty or warranties, either express or implied, regarding the vessel MCARTHUR, its operability, or its condition. Further, the parties mutually agree that Utrök hereby accepts all title to and interest in the vessel MCARTHUR “as is” and “with all faults,” subject to a reversionary interest NOAA will maintain pursuant to section III(B)(3)(c) of this Agreement.

(B) Utrök and Stabbert

1. Upon receipt, Utrök agrees to promptly convey all title to and interest in the MCARTHUR to Stabbert for the sum of ~~\$62,500.00~~.
2. NOAA shall not be a party to this sale, except insofar as NOAA reserves the right to enforce the reverter clause outlined in section III(B)(3)(c) of this agreement, should the required remediation not be completed within the period allotted in that section.

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3. Environmental Remediation

- a. Stabbert agrees that within six months of sale, it will, at its sole expense, remove and properly dispose of hazardous materials on board the vessel, including but not limited to polychlorinated biphenyls (PCBs), asbestos, and lead-based paint (LBP) in accordance with applicable EPA regulations. Stabbert assumes this responsibility in light of the following considerations:

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- i. Based on NOAA’s experience with prior decommissioned vessels similar in class and construction era, as well as what is known about materials that were found in the vessel’s sister ship, DAVIDSON, it is likely the MCARTHUR contains LBP and ACM (e.g., insulation, floor tiles, and acoustic boards). In addition, sampling conducted in Spring 2006 indicated that this vessel has PCB containing articles (e.g., power cables, gaskets, and sealants) in levels exceeding EPA TSCA standards. The TSCA standards generally prohibit the distribution in commerce of PCBs or PCB-containing items in excess of 50 PPM, unless for the purpose of disposal in accordance with 40 C.F.R. Part 761. In entering into this Agreement, Utrök and Stabbert acknowledge this disclosure statement and understand the MCARTHUR likely contains the above hazardous materials, and possibly additional materials not identified herein.

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ii. Transfer of the vessel must be in compliance with all applicable local, state, and federal laws, including laws regulating hazardous materials and their disposal. In particular, the transfer must be in compliance with the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et. seq., and its implementing regulations at 40 C.F.R. Part 761. These requirements prohibit the distribution in commerce of PCBs or PCB containing items in excess of 50 ppm, unless for the purpose of disposal. 40 C.F.R. § 761.20. To ensure compliance with these requirements, Stabbert agrees to dispose of PCBs and PCB containing items in excess of 50 ppm on the vessel in accordance with EPA regulations at 40 C.F.R. Part 761 prior to any use or subsequent transfer of the vessel.

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b. Stabbert agrees to provide NOAA with written certification and supporting documentation that it has fully removed and disposed of hazardous materials identified in this Agreement. Such certification and documentation shall be due within 30 days of completion of remediation.

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c. Both Utrök and Stabbert agree that if hazardous materials on the MCARTHUR are not remediated within six months of execution of this Agreement, as required by section III(B)(3), all title to and interest in the MCARTHUR shall, without compensation, revert to NOAA.

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d. Sections are intended to ensure NOAA’s compliance with TSCA and other applicable environmental laws.

IV. Terms and Conditions

- (A) All title to or interest in the MCARTHUR presently held by NOAA, as well as the risk of all loss or damage to the ship, shall transfer to Utrök upon execution of this MOU by NOAA.
- (B) In accepting the vessel MCARTHUR, Utrök and Stabbert shall indemnify and hold harmless the United States Government, its agencies, employees and agents, for any and all claims related to the disposal, handling, storage or release or potential release of PCBs, LBP, ACM, or any other known or unknown hazardous substance associated with the MCARTHUR, under any law or treaty, foreign or domestic.
- (C) Utrök and Stabbert shall hold and save the United States Government, its agencies, employees and, agents, harmless from liability of any nature or kind, including costs and expenses to which they may be subject or on

account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this transfer, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of Utrök, its contractors, subcontractors, employees, and agents.

- (D) No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this transfer.
- (E) The parties to this transfer mutually agree that any obligations of the parties and all questions of interpretation arising under this transfer shall be resolved under the applicable laws of the United States of America.
- (F) Nothing herein is intended to conflict with current DOC, bureau, or office directives. If terms of this agreement are inconsistent with existing directives of either of the offices entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties. Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of disagreement to respective higher officials for appropriate resolution.

## **V. Approvals**

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On behalf of the  
National Oceanic and Atmospheric Administration

September XX, 2006

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On behalf of the  
Local Government of Utrök

September XX, 2006

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On behalf of the  
Stabbert Maritime Yacht and Ship, LLC

September XX, 2006